IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL REVISION APPLICATION NO. 31 OF 2005

Mr. Mohammad Rafiq,
Ponda, Goa. ..... Petitioner

V e r s u s

State of Goa
Through Public Prosecutor ..... Respondent

Shri Mahesh Amonkar, Advocate for the Petitioner.

Shri S. N. Sardessai, Public Prosecutor for the State.

CORAM : N. A. BRITTO, J.

DATE : 23rd February, 2006.

P.C.

The petitioner is the accused, who has been convicted and sentenced by the learned J.M.F.C., Ponda, by Judgment/Order dated 30.11.2002 and whose conviction and sentence has been upheld by the learned IInd Adhoc and Assistant Sessions Judge, Panaji, by his Judgment/Order dated 29.09.2005.

2. The case of the prosecution was that the accused who was a

driver of Truck No. GDS 5601, drove the same in a fast speed on 05.11.1999 at 08.25 hours, near old bus stand, Ponda, in a rash and negligent manner and on reaching near Lotlikar Petrol Pump, gave a dash on a ongoing scooter No. GA-01/P-1865, as a result of which, the scooter rider namely Ramchandra Babuso Gaunekar, resident of Gaunem, Bandora, Ponda, died on the spot on account of injuries received by him on the ribs and other parts of the body.

3. The prosecution examined several witnesses and amongst them, three witnesses as eye witnesses namely, P.w.5/Krishna Gaude, who was the driver of another Scooter bearing no. GA-01/B-3272, the pillion rider of the said scooter namely P.w.6/Vinayak Gaude, and P.w.7/Prabhakar Gungi, a Police Constable, who at the relevant time, was on duty at the Ponda bus stand.

4. Both the Courts below have relied upon the evidence of the said three eye witnesses and have convicted the accused as aforesaid. Shri Sardessai, the learned P.P. on behalf of the respondent, has referred to the case of ***State of Kerala v. Puttumana Illath Jathavedan Namboodiri ((1999) 2 S.C.C. 452)*** and has submitted that the revisional jurisdiction of

this Court cannot be equated with appellate jurisdiction and, as such, re-appreciation of evidence is not permissible unless gross miscarriage of justice has occurred. Shri Sardessai has submitted that there are no glaring features in the evidence of the said three eye witnesses, whose evidence have been believed by both the Courts below, for this Court to interfere in revisional jurisdiction and unsettle the conviction recorded by both the Courts.

5. There is no dispute as far as the death of the deceased is concerned. The post mortem report produced by the prosecution at exhibit P.w.11/A shows that the deceased died due to facio cranio cerebral damage, associated with damage for ribs and left lungs as a result of blunt force impact by object or surface and the said injuries could have been caused by the alleged motor vehicular accident. As can be seen from the sketch of the scene of offence produced through P.w.1/Anton Silveira, the road where the accident took place was about 20 feet broad, which certainly could allow with ease the movement of two vehicles. Referring to the evidence of P.w.5/Krishna Gaude and P.w.6/Vinayak Gaude, who were the rider and pillion rider respectively of scooter no. GA-01/B-3272, Shri Amonkar, the learned Counsel on behalf of the petitioner/accused, has

submitted that both the said witnesses were from the same locality namely Gaunem, Bandora, as that of the deceased and their statements were recorded subsequently. Shri Amonkar has further submitted that there are vital contradictions in the evidence of the said two witnesses and, therefore, both the Courts below ought not to have placed reliance upon the evidence of the said witnesses. There is no dispute that the statement of P.w.5/Krishna Gaude, was recorded on the same day of the accident and that of P.w.6/Vinayak Gaude, was recorded on the next day i.e. on 06.11.1999. It is true that P.w.5/Krishna Gaude stated initially that the accused gave an impact on the scooter on the front left side, as a result of which, Ramchandra Gaude, fell on the ground and died on the spot. It could be nobody's case that the truck which was going behind the scooter driven by the accused could have given the impact on the left side of the scooter and this position was made clear by the said P.w.5/Krishna Gaude, subsequently in his evidence when he stated that the impact was given by the truck on the rear part of the scooter. P.w.6/Vinayak Gaude also stated that they were coming from Gaunem, and when they reached near Almeida High School, the truck driven by the accused, overtook them in a fast speed and when they reached near Lotlikar Petrol Pump, the rear back portion of the truck gave an impact on the scooter which was standing by the side of

the road, as a result of which, the person on the scooter fell on the road. P.w.6/Vinayak Gaude, stated that the left rear back portion of the truck hit the Scooter. When the evidence of P.w.5/Krishna Gaude and P.w.6/Vinayak Gaude is read as a whole, it gives a clear impression that the truck driven by the accused gave an impact on the scooter from its (of the truck) rear back portion and probably on account of the same, that the accused did not know that his truck had indeed dashed against the scooter of the deceased. P.w.7/Prabhakar Gungi, is a Police Constable, who was on duty at the bus stand and it is he who chased the truck and apprehended the driver and brought him back. It is true that P.w.7/Prabhakar Gungi, stated that the accident took place while the truck negotiated the turn and it has been submitted by Shri Amonkar, that the said turn was ahead from the spot of the accident at a distance of about 50 metres from the said spot. However, there is no cross examination on this aspect. Even otherwise, considering the distance of the said turn from the spot of accident, in my view, only because P.w.7/Prabhakar Gungi stated the accident took place while the truck was negotiating the turn, could be not sufficient to disbelieve the version of P.w.7/Prabhakar Gungi, who being a Constable, had nothing against the accused who was the driver of the said truck. Moreover, there is hardly any cross examination done of P.w.7/Prabhakar

Gungi, so as to bring facts on record, which would otherwise make the Court disbelieve the version given by him.

6. Shri Amonkar, the learned Counsel on behalf of the petitioner/accused, has placed reliance on a decision of this Court in the case of ***Tukaram S. Gore v. State (AIR 1971 Bombay 164)***, wherein it is stated that there must be proof that the rash or negligent act of the accused was the proximate cause of death and that there must be a direct nexus between the death of a person and rash or negligent act or accused. It is also stated that there must be evidence not only of rashness or negligence acceptable to Court, as laid down by the Supreme Court in the case of ***Suleman Rahiman v. State of Maharashtra (AIR 1968 SC 829)***. There can be no dispute regarding the said observations of this Court in the said case. In the case at hand, the prosecution has abundantly proved with the evidence of the said three witnesses that the dash was given by the truck driven by the accused from its rear back portion on the scooter driven by the deceased, which was going in the same direction as that of the truck and at the time when the truck was driven by the accused in a fast speed. Giving a dash at the rear of the vehicle, by another vehicle going in the same direction without any explanations, would certainly amount to rash

driving. Both the Courts below have placed reliance on the said three witnesses. I have no reason good enough to disturb the findings or facts recorded by both the Courts below. In other words, there are no glaring features in the evidence of the said witnesses, which calls for interference of this Court in revisional jurisdiction. In view of the above, the Revision Petition is hereby dismissed.

N. A. BRITTO, J.

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